# UNITED STATES PATENT AND TRADEMARK OFFICE

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| 09/754,492 | 01/04/2001 | G. Stephen LeGraw | V144.101.102 | 2903 |

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|---|---|---|

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| ART UNIT | PAPER NUMBER |
|---|---|
| 3628 | |

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 09/754,492 | LEGRAW, G. STEPHEN |
| | **Examiner** | **Art Unit** | |
| | Timothy M. Harbeck | 3628 | |

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on _09 January 2006_.

2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) _61-120_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _61-120_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

1/09/2006 has been entered.

### *Claim Objections*

Claims 105 and 114-119 objected to because of the following informalities:

**Re Claim 105**: There is improper antecedent basis for this claim, as it is

dependent upon canceled claim 26. It appears that the applicant meant to have claim

105 depend from claim 89, and the claims has been examined under this assumption.

**Re Claims 114-119**: These claims depend from computer readable medium

claim 113, however they refer back to the "method of claim 113." There is no method of

claim 113, but rather a computer readable medium for performing a method. For the

purposes of examination, the examiner has interpreted the claims to read "the computer

readable medium of claim 113, further comprising..." Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 61-68, 70, 73-80, 85, 87-91, 94-99, 102-103 and 105 are rejected under

35 U.S.C. 102(e) as being anticipated by Fitzgerald (US PAT 6,434,533 B1).

**Re Claim 61**: Fitzgerald discloses a method for the exchange, analysis, and

reporting of performance data in businesses with time-dependent inventory comprising

the steps of:

- Collecting private company information from a user at a first location

  (Column 3, lines 50-55), the private company information having a

  confidential data portion and an exchange data portion (Column 9, lines

  12-21).

- Transmitting only the exchange data portion to a central location (Column

  9, lines 18-20)

- Defining an exchange data set at the central location (Column 3, lines 23-

  27)

- Updating the exchange data set using the exchange data portion (Column

  7, lines 15-25)

- Determining an output data set from the exchange data set (Column 9 line 61- Column 10 line 6)

- Transmitting the output data set from the central location to the user at the first location (Column 3, lines 28-32)

- Wherein the private company information relates to a private company in a commercial industry (Time Dependent Industry Businesses; Column 3, lines 6-7), and the output data set includes statistical averages for the commercial industry (Figs 8, 9A, 9B)

**Re Claim 62-63**: Fitzgerald discloses the claimed method supra and further discloses wherein the step of transmitting only the exchange data portion to a central location includes the step of transmitting only the exchange data portion to a central location via a network and wherein the network includes an Internet communication link (Column 4, lines 1-2).

**Re Claim 64**: Fitzgerald discloses the claimed method supra and further discloses the steps of:

- Defining one or more groups (Column 3, lines 14-18; the reports are representative of similar business in a particular <u>market area)</u>

- Determining one or more groups associated with the collected information (Column 3, lines 14-18; inherent in the statement that "businesses in a market area can reliably exchange daily performance data;" must be a way to determine the scope of the market area)

**Re Claim 65**: Fitzgerald discloses the claimed method supra and further

discloses the step of attaching the determined groups to the exchange data portion

(See Fig 8; the members of the group are attached with the exchange portion).

**Re Claim 66**: Fitzgerald discloses the claimed method supra and further

discloses the step of defining the user as a qualified user (Column 6, lines 35-39 and

Column 12 lines 11-13).

**Re Claim 67**: Fitzgerald discloses the claimed method supra and further

discloses the step of defining the exchange data set as a qualified user exchange data

set (Column 6, lines 35-39). The system "can be used to provide processed

performance data only to customers that input data into the system."

**Re Claim 68**: Fitzgerald discloses the claimed method supra and further

discloses the step wherein transmitting the output data set from the central location to

user at the first location is performed via an Internet communication link (Column 4,

lines 1-2).

**Re Claim 70**: Fitzgerald discloses the claimed method supra and further

discloses the step of storing the output data set at the central location (Column 8, lines

24-27).

**Re Claim 73**: Fitzgerald discloses the claimed method and further discloses the

step of determining the output data set further comprises the steps of:

- Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line 40)
- Generating a statistical data set using the exchange data set and the
  statistical model (FIG 8)

- Storing the statistical data set as the out put data set (Column 8, lines 22-27)

**Re Claim 74**: Fitzgerald discloses the claimed method supra and further discloses the step of receiving a second exchange data portion from a second user; updating the exchange data set using the second exchange data portion; and transmitting the output to the second user (Column 3, lines 47-55; "plurality of business entities;" each would have separate data relative to their business to exchange).

**Re Claim 75**: Fitzgerald discloses the claimed method supra and further discloses the steps of:

- Defining a graphical user interface including a webpage (Column 6, lines 60-63)

- Collecting information from the user via the webpage (Column 7, lines 11-14)

**Re Claim 76**: Fitzgerald discloses the claimed method supra and further discloses the step of accessing the central controller via the webpage using a login routine, wherein the login routine determines whether a user is allowed to access the central controller (Column 7, lines 3-10).

**Re Claim 77**: Fitzgerald discloses the claimed method supra and further discloses the step wherein transmitting the output data set to the user is performed at the completion of the login routine (Column 7, lines 11-37)

**Re Claim 78**: Fitzgerald discloses the claimed method supra and further discloses the step of generating a graph from the output data set (Figs 9A and 9B).

**Re Claim 79**: Fitzgerald discloses the claimed method supra and further discloses the step wherein the step of collecting information from a user includes the step of collecting benchmark information (Column 1, line 39 – Column 2 line 30). The invention of Fitzgerald is designed to collect pertinent information from a plurality of business competing in a similar market and to produce an output of an individual business' success (benchmark) in relation to its market (FIG 8).

**Re Claim 80**: Fitzgerald discloses the claimed method supra and further discloses the step wherein the benchmarking information is asset information (FIG 8, Column 10, lines 28-46). Fitzgerald uses the hotel industry as an example and in the benchmarking report in figure 8; the statistics are based upon the available hotel rooms (the asset of any hotel), and the derivatives thereof.

**Re Claim 85**: Fitzgerald discloses the claimed method supra and further discloses the step wherein the benchmarking information is performance information. Fitzgerald states that ADR and Occupancy are "performance data" terms in the hotel industry (Column 2, lines 4-9), and these measurements are clearly used to benchmark individual hotels in the output report (Fig 8).

**Re Claim 87**: Fitzgerald discloses the claimed method supra and further discloses the step wherein the statistical averages include at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics and average operating performance data (Figure 9A). Fitzgerald explicitly discloses ADR as a performance statistic (Column 2, lines 4-9), and the output shown in figure 9A shows the statistic averages of ADR for the market.

**Re Claim 88**: Fitzgerald discloses a method for the exchange, analysis, and

reporting of performance data in businesses with time-dependent inventory comprising

the steps of:

- Collecting commercial information via a webpage from a user, wherein

  the commercial data information relates to a private company in an

  industry (Column 3, lines 50-55)

- Generating a commercial data record from the commercial data

  information including a confidential subrecord and an exchange

  subrecord (Column 9, lines 12-21)

- Defining a commercial statistical analysis system having an exchange

  data set (Column 3, lines 23-27)

- Transmitting only the exchange subrecord via a network

  communication link to the commercial statistical analysis system

  (Column 9, lines 18-20)

- Updating the exchange data set using the exchange subrecord

  (Column 7, lines 15-25)

- Generating a commercial statistical data set for the industry using the

  commercial statistical analysis system (FIG 8), wherein the

  commercial data set includes statistical averages for the industry (FIG

  9a, 9b)

- Transmitting the commercial statistical data set to the user (Column 3,

  lines 28-32)

**Re Claim 89**: Fitzgerald discloses the claimed method supra and further

discloses the step wherein transmitting the commercial data set from the commercial

statistical analysis system to the user is completed via the network communication link

(Column 4, lines 1-2).

**Re Claims 90-91**: Fitzgerald discloses the claimed method supra and further

discloses the step of storing the commercial statistical data set at the commercial

statistical analysis system (Column 8, lines 24-27).

**Re Claim 94**: Fitzgerald discloses the claimed method supra and further

discloses the step of

- Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line
  40)

- Generating a commercial statistical data set using the exchange data set
  and the statistical model (FIG 8, 9a, 9b)

**Re Claim 95**: Fitzgerald discloses the claimed method supra and further

discloses the step of receiving a second exchange subrecord from a second user; and

updating the exchange data set using the second exchange subrecord (Column 3, lines

47-55; "plurality of business entities;" each would have separate data relative to their

business to exchange)

**Re Claim 96**: Fitzgerald discloses the claimed method supra and further

discloses the step of accessing the commercial statistical analysis system via the

webpage using a login routine, wherein the login routine determines whether a user is

allowed to access the commercial statistical analysis system (Column 7, lines 3-10).

**Re Claim 97:** Fitzgerald discloses the claimed method supra and further

discloses the step wherein transmitting the commercial statistical data set to the user is

performed at the completion of the login routine (Column 7, lines 11-37)

**Re Claim 98:** Fitzgerald discloses the claimed method supra and further

discloses the step of generating a graph of the commercial statistical data set (FIG 9a,

9b).

**Re Claim 99:** Fitzgerald discloses the claimed method supra and further

discloses the step of collecting information from a user includes the step of collecting

asset information (FIG 8, Column 10, lines 28-46).  Fitzgerald uses the hotel industry as

an example and in the benchmarking report in figure 8; the statistics are based upon the

available hotel rooms (the asset of any hotel), and the derivatives thereof.

**Re Claim 102:** Fitzgerald discloses the claimed method supra and further

discloses the step of determining whether the user is a qualified user (Column 6, lines

35-39 and Column 12 lines 11-13).

**Re Claim 103:** Fitzgerald discloses the claimed method supra and further

discloses the step of defining a qualified user exchange data set, wherein the qualified

user exchange data set is allowed to be accessed only by the qualified user (Column 6,

lines 35-39)

**Re Claim 105:** Fitzgerald discloses the claimed method supra and further

discloses the step of defining the network communication link in include an Internet

communication link (Column 4, lines 1-2).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 69, 71-72, 81-84, 86, 92-93, 100-101, 104 and 106-120 are rejected

under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald.

**Re Claim 69, 71 and 72**:  Fitzgerald discloses the claimed method supra and

while not explicitly disclosing the step comprising storing the output data set, the

collected information and the confidential data portion at the first location, the step of

saving information on an individual computer is notoriously well known in the art and

would have been obvious to anyone of ordinary skill.  Furthermore, Fitzgerald notes that

the user interface includes a CPU and associated memory, from which storage

capabilities would be obvious.

**Re Claims 81-84**:  Fitzgerald discloses the claimed method supra and while not

explicitly disclosing the steps wherein the asset information includes public business

valuation information, private business valuation information, portfolio information or

capital structure information, the system of Fitzgerald could easily be adapted to receive

and output data that is relevant to any market.  The hotel example is used (Column 1

line 38- Column 2 line 30), with information such as Occupancy and Average Daily Rate

submitted and outputted as statistics relevant to that particular industry.  However every

industry is different, and depending upon the market on which the system is operating,

the parameters of the system will change.  It would have been obvious to anyone skilled

in the ordinary art at the time of invention to adapt the system of Fitzgerald in order to change the parameters submitted relative to the market, because performance measurements in one industry are often time inconsequential or non-existent in another industry and would therefore provide no relevant information for that market segment.

**Re Claim 86**: Fitzgerald discloses the claimed method supra and while not explicitly disclosing the step of collecting public company commercial information from a published public exchange market, this process is old and well known in the art and would have been obvious to anyone of ordinary skill. The mere fact that this is published information means that anyone can collect and analyze it, and this process has been done via a network for years. One would be motivated to add this feature to the disclosure of Fitzgerald in order to create an even larger cache of industry information, in order to further locate the users position in the overall market.

**Re Claims 92-93**: Fitzgerald discloses the claimed method supra and while not explicitly disclosing the step comprising storing the collected information at the location of the user and storing the confidential subrecord at the location of the user, the step of saving information on an individual computer is notoriously well known in the art and would have been obvious to anyone of ordinary skill. Furthermore, Fitzgerald notes that the user interface includes a CPU and associated memory, from which storage capabilities would be obvious.

**Re Claims 100 and 101**: Fitzgerald discloses the claimed method supra and while not explicitly disclosing wherein the asset information includes public business valuation, private business valuation and other statistical information, the system of

Fitzgerald could easily be adapted to receive and output data that is relevant to any market. The hotel example is used (Column 1 line 38- Column 2 line 30), with information such as Occupancy and Average Daily Rate submitted and outputted as statistics relevant to that particular industry. However every industry is different, and depending upon the market on which the system is operating, the parameters of the system will change. It would have been obvious to anyone skilled in the ordinary art at the time of invention to adapt the system of Fitzgerald in order to change the parameters submitted relative to the market, because performance measurements in one industry are often time inconsequential or non-existent in another industry and would therefore provide no relevant information for that market segment.

**Re Claim 104**: Fitzgerald discloses the claimed method supra and while not explicitly disclosing the step of defining the exchange data set to include the qualified user exchange data set as a subset of the exchange data set, it would have been obvious to anyone skilled in the ordinary art for the system of Fitzgerald to create a broader data set, perhaps involving surrounding markets in order to create a larger view of the particular industry. In this manner, a user can see not only large-scale statistics, but local statistics of a particular market which would more accurately reflect the position of the business.

**Re Claim 106**: Further system claim would have been obvious to perform previously rejected method claim 61 and is therefore rejected using the same art and rationale.

**Re Claim 107:** Fitzgerald discloses the claimed system supra and further discloses wherein the user is a qualified user and the commercial statistical data set is accessible only by one or more qualified users (Column 6, lines 35-39)

**Re Claim 108:** Fitzgerald discloses the claimed system supra and further discloses wherein

- A first user interface located at a first location with the user (FIG 1A, 200)

- Wherein the first user interface is in communication with the commercial information exchange system via the network, for transmitting the exchange record from the first user interface to the commercial information exchange system and for transmitting the commercial statistical data set to the first user from the commercial information exchange system (FIG 1a, 1b)

**Re Claim 109:** Fitzgerald discloses the claimed system supra and further discloses wherein the network includes the Internet (Column 4, lines 1-2).

**Re Claim 110:** Fitzgerald discloses the claimed system supra and further discloses wherein the exchange system controller further includes a web server (Column 4, lines 42-50)

**Re Claim 111:** Fitzgerald discloses the claimed system supra and further discloses wherein the exchange system controller includes a query manager for managing queries between the user and the commercial information exchange system (Column 7, lines 11-14).

**Re Claim 112**: Fitzgerald discloses the claimed system supra and further

discloses wherein the exchange system controller includes a statistical model, wherein

the commercial statistical data set is generated using the exchange data set and the

statistical model (Column 3, lines 23-27).

**Re Claims 113-119**: Further computer readable medium claims would have

been obvious to perform previously rejected method claims 61-62, 73-74, 76-77 and 82

respectively and are therefore rejected using the same art and rationale.

**Re Claim 120**: Fitzgerald discloses a method for the exchange, analysis, and

reporting of performance data in businesses with time-dependent inventory comprising

the steps of:

- Collecting private company data information including business valuation
  and other statistical data via a webpage from a user associated with the
  private company wherein the private company is part of a commercial
  industry (Column 3, lines 14-22)

- Generating a private company data record from the private company data
  information (Column 3, lines 23-27), including a confidential subrecord and
  an exchange subrecord (Column 9, lines 12-21)

- Defining a statistical analysis system having an exchange data set and at
  least one statistical model (Fig 8, Column 3, lines 23-27)

- Transmitting only the exchange subrecord to the statistical analysis
  system (Column 3, lines 28-32)

- Updating the exchange data set using the exchange subrecord (Column 7, lines 15-25)

- Storing the updated exchange data set to the statistical analysis system (Column 8, lines 24-27)

- Generating a private company statistical data set using the statistical analysis system based upon the updated exchange data set and the at least one statistical model, wherein the private company statistical data set includes statistical averages for the commercial industry, the statistical averages including at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics and average operating performance data (SEE FIG 8, 9a, 9b)

- Transmitting the private company statistical data set to one or more qualified users, wherein the qualified user is defined as a user who provides exchange sub records to the statistical analysis system (Column 6, lines 35-39).

Fitzgerald does not explicitly disclose the step of storing the confidential subrecord at the location of the user, the step of saving information on an individual computer is notoriously well known in the art and would have been obvious to anyone of ordinary skill. Furthermore, Fitzgerald notes that the user interface includes a CPU and associated memory, from which storage capabilities would be obvious.

## *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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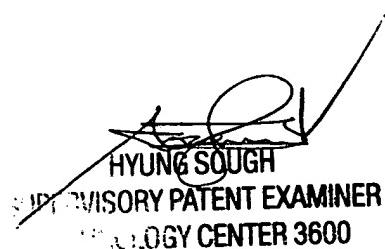
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